UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/910,281	07/19/2001	Peter Robert Foley	CM2492	2076

27752 7590 10/23/2002

THE PROCTER & GAMBLE COMPANY
INTELLECTUAL PROPERTY DIVISION
WINTON HILL TECHNICAL CENTER - BOX 161
6110 CENTER HILL AVENUE
CINCINNATI, OH 45224

EXAMINER	
DELCOTTO, GREGORY R	
ART UNIT	PAPER NUMBER
1751	6

DATE MAILED: 10/23/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/910,281	Applicant(s) FOLEY ET AL.	
	Examiner Gregory R. Del Cotto	Art Unit 1751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *25 May 2002* .

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *51-91* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *51-91* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☒ None of:

1.☒ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

DETAILED ACTION

1. Claims 51-91 are pending. Claims 1-50 have been canceled.

Applicant's election of Group I in Paper No. 4 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

This requirement is made **FINAL.**

Priority

Acknowledgment is made of applicant's claim for foreign priority based on an application PCT/US00/34906, filed 12/21/00, PCT/US00/19619, filed 7/19/00, and PCT/US00/20255, filed 7/25/00. It is noted, however, that applicant has not filed certified copies of the applications as required by 35 U.S.C. 119(b). Thus, priority has not been granted. **Objections/Rejections Withdrawn**

2. The following objections/rejections as set forth in Paper #4 have been withdrawn:

The rejection of claims 1-44 under 35 USC 112, second paragraph, has been withdrawn.

The rejection of claims 1-4, 6-12, 17-26, 29, 30, and 33-36 under 35 USC 102(b) as anticipated by Wierenga et al (US 5,919,312) has been withdrawn.

Claim Rejections - 35 USC § 102

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in-
(1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effect under this subsection of a national application published under section 122(b) only if the international application designating the United States was published under Article 21(2)(a) of such treaty in the English language; or
(2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that a patent shall not be deemed filed in the United States for the purposes of this subsection based on the filing of an international application filed under the treaty defined in section 351(a).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 51-79, and 81-86 are rejected under under 35 U.S.C. 103(a) as obvious over Wierenga et al (US 5,919,312).

Wierenga et al teach a composition for cleaning cooking surfaces comprising 0.5% to 10% of a surfactant such as amine oxides. See Abstract. These compositions can be used to pre-treat oily or greasy soils on fabrics. See column 4, lines 40-50. The composition also comprises from about 0.5% to about 10% by weight of an amine such as monoethanolamine, diethanolamine, etc. Additionally the composition contains greater than 20% of a polyhydric alcohol and suitable alcohols include glycerol, diethylene glycol, etc. See column 8, lines 15-40. Specifically, Wierenga et al teach a cleaning composition containing 0.8% amine oxide surfactant, 5.0% monoethanolamine, 42.85% glycerol, 45% water, etc. See column 9, lines 30-45. The pH of the composition is 11.6.

Wierenga et al do not specifically teach a cleaning composition containing a soil swelling agent, solvent, soil spreading agent, and the other requisite components of the composition in the specific proportions as recited by the instant claims.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to formulate a cleaning composition containing a soil swelling agent, solvent, soil spreading agent, and the other requisite components of the composition in the specific proportions as recited by the instant claims, with a reasonable expectation of success and similar results with respect to other disclosed components, because the broad teachings of Wierenga et al suggest a cleaning composition containing a soil swelling agent, solvent, soil spreading agent, and the

other requisite components of the composition in the specific proportions as recited by the instant claims.

Claims 51-79 and 81-87 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kacher (US 5,891,836).

Kacher teaches light-duty liquid or gel dishwashing detergent compositions containing six essential which are a certain type of anionic surfactant, certain nonionic surfactants, certain suds boosters/stablizers, an aqueous liquid carrier, a liquid hydrocarbon and a glycol ether microemulsion-forming solvent. See column 3, lines 15-30. Suitable suds boosters include amine oxide semi-polar nonionic surfactants, C8-C22 alkyl polyglycosides, etc. See column 5, line 50 to column 6, lines 69. Suitable microemulsion forming solvents include diethylene glycol monobutyl ether, propylene glycol monomethyl ether, dipropylene glycol monobutyl ether, etc. See column 8, lines 35-69. Additionally, optional ingredients include a thickener, calcium and/or magnesium ions, etc. See column 9, lines 25-69. Suitable thickeners include hydroxypropyl methylcellulose, etc. Suitable optional ingredients include perfumes, dyes, etc. See column 12, lines 1-20. The dishwashing compositions have pH of from about 4 to about 11. Additionally, buffering agents can be used in the compositions at levels from about 0.1% to 15% and include monoethanolamine, triethanolamine, etc. See column 12, lines 1-56.

Note that, with respect to the pH and the other physical parameters of the composition as recited by the instant claims, the Examiner asserts that the broad teachings of Kacher would suggest compositions having the same pH and other

physical parameters of the composition as recited by the instant claims because Kacher suggests compositions containing the same components in the same proportions as recited by the instant claims.

Kacher does not specifically teach a cleaning composition containing a soil swelling agent, solvent, soil spreading agent, and the other requisite components of the composition in the specific proportions as recited by the instant claims.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to formulate a cleaning composition containing a soil swelling agent, solvent, soil spreading agent, and the other requisite components of the composition in the specific proportions as recited by the instant claims, with a reasonable expectation of success and similar results with respect to other disclosed components, because the broad teachings of Kacher suggests a cleaning composition containing a soil swelling agent, solvent, soil spreading agent, and the other requisite components of the composition in the specific proportions as recited by the instant claims.

Claims 80 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kacher (US 5,891,836) as applied to claims 51-79 and 81-87 above, and further in view of Nicholson et al (US 5,741,767).

Kacher does not specifically teach the use of smectite clays in addition to the other requisite components of the composition as recited by the instant claims.

Nicholson et al teach a warewashing composition for a machine dishwasher. The composition comprises an effective amount of an organic peroxy acid and an

amylase enzyme. See Abstract. Additionally, the detergent compositions contain a surfactant. See column 6, line 50 to column 10, line 45. Additionally, thickeners can be used such as smectite clays.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to use smectite clay in the detergent composition taught by Kacher, with a reasonable expectation of success, because Nicholson teach a similar cleaning composition which employs smectite clays as thickeners and further, Kacher teaches the use of thickening agents in general.

Claims 88-91 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kacher as applied to claims 1-26 and 29-38 above, and further in view of Trinh et al (US 6,001,789).

Kacher is relied upon as set forth above. However, Kacher does not specifically teach the use of ionone perfumes, musk, or cyclodextrin in addition to the other requisite components of the composition as recited by the instant claims.

Trinh et al teach a cleaning composition in which a perfumes including ionones and musks are absorbed into a cyclodextrin carrier material to form complexes. See abstract and col. 7, line 35 to col. 12, line 55.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to use a perfume-cyclodextrin complex in the cleaning composition taught by Kacher, with a reasonable expectation of success, because Trinh et al teach the use of a perfume-cyclodextrin complex a similar cleaning composition and further, Kacher teaches the use of perfumes in general.

Doubl Pat nting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington,* 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 51-91 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-42 of copending Application No. 09/909403. Although the conflicting claims are not identical, they are not patentably distinct from each other because claims 1-42 of 09/909403 encompass the material limitations of the instant claims.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Response to Arguments

With respect to Kacher and Wierenga et al, Applicant states that neither of these references or combinations thereof with other secondary references suggest the cleaning composition as recited by the instant claims. In response, note that, the Examiner maintains that the broad teachings of Kacher or Wierenga et al and combinations of these with other secondary references, suggest the claimed invention

and are sufficient to establish a prima facie case of obviousness. Note that, Applicant has provided no data or evidence showing the unexpected and superior properties of the claimed invention in comparison to those compositions falling outside the scope of the claimed invention.

Conclusion

1. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Remaining references cited but not relied upon are considered to be cumulative to or less pertinent than those relied upon or discussed above.

Applicant is reminded that any evidence to be presented in accordance with 37 CFR 1.131 or 1.132 should be submitted before final rejection in order to be considered timely.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory R. Del Cotto whose telephone number is (703) 308-2519. The examiner can normally be reached on Monday thru Friday from 8:30 AM to 6:00 PM. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta, can be reached on (703) 308-4708. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-3599.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

GRD
February 10, 2002

GREGORY DELCOTTO
PRIMARY EXAMINER